

Memo

From: **Terry Whiteside**
To: **Montana Wheat and Barley Committee**
Date: May 1, 2008
Re: **Transportation Report**



HR 1650 ANTITRUST CLEARS MAJOR HURDLE - QUICK REPORT - SHIPPERS WIN A MAJOR VICTORY

The House Judiciary Committee just reported on 4-30-08 that H.R.1650 – lifting RR antitrust exemption to the full House on a bipartisan voice vote. Two amendments were included in the final bill: (1) the same exemption for rail car pooling that was included in S.772 and (2) an amendment by Congresswoman Sheila Jackson Lee (D-TX) that creates some reporting obligations for the Surface Transportation Board. Now both S772 and HR 1650 are poised for Congressional action.

Thanks to Congresswoman Tammy Baldwin (D-WI), the lead House sponsor of H.R.1650, for her leadership in moving this bill through the committee. Absolutely nothing would have yet happened on H.R.1650 but for the committed and effective efforts of Congresswoman Baldwin. We also want to thank Chairman Conyers (D-MI), whose strong support for the bill was essential to the movement of this bill through the committee. Also thanks to both Anant Raut, Democratic Counsel on the House Judiciary Committee, who handled this bill for the Majority, and Elissa Levin, staff for Congresswoman Baldwin, for their tremendous efforts on this bill. They have worked tirelessly and effectively to move this bill forward - and have been an absolute pleasure to work with on top of that!

Finally, our team of Hill lobbyists out-lobbied the railroad lobby in an office to office contest in the committee to achieve this victory. The railroads put up a very stern fight for the votes of both the Democrats and Republicans on the committee and proposed a number of "killer" amendments, some more subtle than others. At the end of the day, however, our troops prevailed and no damaging amendments were added to the bill. This is a tremendous victory attributable not only to our Hill leaders and to all of our members and grassroots supporters around the nation, but also to this team of Hill lobbyists.

"Most importantly," Mike Snovitch Executive Director of the Alliance for Rail Competition stated "it shows that RR's can be beat in Congress and it is possible to move good rail customer legislation that the railroads oppose. Again congratulations to all – job well done." According to Terry Whiteside, Chairman of the Alliance for Rail Competition "the success of this legislation shows the value that has been created by captive shippers working together with Congress. Many organizations helped bring about this victory, including CURE, ACC, NRECA, APPA, Edison Electric Institute and the Alliance for Rail Competition."

CONGRESS OF THE UNITED STATES WASHINGTON, D.C. 20515

FOR IMMEDIATE RELEASE:

April 30, 2008

Contact: Baldwin – Jerilyn Goodman 608-251-8737
Pomeroy – Sandra Salstrom 202-225-2611
Alexander -Jenni Terri 202-225-8490

Railroad Monopoly Power Nearing End of Line ***Judiciary Committee Votes to End Antitrust Exemption***

The House Judiciary Committee today passed the bipartisan **Railroad Antitrust Enforcement Act of 2007 (H.R. 1650)**, legislation that eliminates antiquated railroad antitrust exemptions enjoyed, unfairly, by freight railroads.

Currently, due to dramatic consolidation, only four major Class 1 railroads carry 90% of our nation's freight, often providing unreliable service at exorbitant fees. The legislation, authored by Congresswoman Tammy Baldwin (D-WI), and joined by Congressmen and Earl Pomeroy (D-ND) and Rodney Alexander (R-LA), will, finally and fairly, place the rail industry under the same antitrust laws that apply to other industries, including telecommunications, energy, trucking, and aviation.

"This legislation is long overdue and absolutely necessary to begin to end the railroad monopolies that are driving consumer prices up and service down," said Congresswoman Baldwin. "This virtual monopoly by the freight rail industry is unnecessary, unfair, and unacceptable. It's time for Congress to apply our antitrust laws more equitably and I'm delighted to see this legislation move down the track toward a vote by the full House," Baldwin said.

"Farmers in North Dakota and across the country depend on reliable, reasonably priced rail service to deliver their crops to market. When one railroad is allowed to monopolize shipping markets, farm country suffers," Pomeroy said. "Today's passage of our bill to eliminate the railroad antitrust exemption by the House Judiciary Committee is a victory for farmers, energy producers and consumers alike."

"It is far time the railroad industry complies with anti-trust laws, and the approval of this bill by the Judiciary Committee is a positive step toward eliminating unfair monopolies in the railroad industry," Alexander said. "Agriculture and energy industries have demanded fair railroad competition, and this bill brings us closer to that goal."

A November 2007 letter from 21 state Attorneys General to the House and Senate Leadership had asked Congress to remove the railroad antitrust exemption. Rail shippers in all parts of the country, held captive by the current lack of competition, were elated by today's Committee vote.

"This is a tremendous step forward for rail customers," said Bob Szabo, Executive Director and Counsel, CURE, a national rail customer advocacy organization. "Now both the House Judiciary Committee and the Senate Judiciary Committee have said that the railroad industry should abide by the antitrust laws like everybody else. This will ensure more rail customers access to competition and reduce the cost of electricity, food and other consumer goods for American consumers. We are very grateful to Congresswoman Tammy Baldwin (D-WI) for her

leadership in moving this bill through the committee, to Chairman Conyers (D-MI) for his support, without which this would not have been possible; and to Congressmen Pomeroy and Alexander for their co-authorship. We believe that this Congress, in 2008, now has a chance to help the consumers of America by enacting the Railroad Antitrust Enforcement Act of 2007." Szabo said.

For years, captive shippers have been reporting spiking rail rates and unreliable service. In Wisconsin, for example, Dairyland Power, a rural cooperative provides electricity for approximately 575,000 people in Wisconsin, Minnesota, Iowa, and Illinois. Dairyland's three coal-fired power plants consume 3.2 million tons of coal per year, 75% of which comes by rail from the Powder River Basin in Wyoming. Dairyland now pays about \$75 million a year to ship \$30 million worth of coal. Railroad rate increases have translated into a 15 to 20% increase in electricity rates for consumers.

Consumers also face increased rates from other captive shippers – including chemical companies, the manufacturing industry, agricultural sector, forest and paper companies, among others. And consumers pay the increased costs of the electricity consumed by restaurants, hospitals, dry cleaners, and other producers of goods and services.

The bill repeals the railroad antitrust exemptions in antitrust and transportation statutes, so that antitrust law fully covers railroads. The bill will permit the Justice Department and Federal Trade Commission to review railroad mergers under antitrust law and it will eliminate antitrust exemptions for mergers, acquisitions, collective ratemaking and coordination among railroads. The bill also will allow state Attorneys General and other private parties to sue for treble damages and to sue to halt anticompetitive conduct, both of which are not currently allowed under federal law.

The bill has wide support from utilities, agricultural groups, chemical companies, the cement and steel industries, paper and forestry companies, and consumer groups.

The nation's railroad system was designed to transport goods and products from rural areas and cities to distribution points across the nation. In 1980, the railroad industry found itself in poor financial health, overbuilt and failing. Seeking a remedy, Congress removed much of the regulatory oversight over the industry and merger authority was placed under the industry's sole regulator – the Surface Transportation Board (STB). Unfortunately, in 1980, Congress did not remove the antitrust exemptions that the industry had accumulated through various acts of Congress during the 1900s.

Free from government oversight by the Department Of Justice or Federal Trade Commission, the rail industry has undergone dramatic consolidation, to levels never envisioned by Congress in 1980. And, over the years, while railroads have profited tremendously, the effect on shippers with little or no access to transportation competition along their route has been damaging and largely ignored by the STB.

"Opponents argue that by subjecting the railroads to our nation's antitrust laws, we will somehow be 're-regulating them.' Our legislation does nothing of the sort. Subjecting the railroads to antitrust laws is about competition...not re-regulation. This bill will not fix all of the problems with the railroad industry. But, it will be a starting point for good faith negotiations between the rails and shippers. And, it will restore some of the public interest responsibilities to our nation's rail system." Rep. Baldwin explained,

A companion bill to H.R. 1650, S. 772, introduced by Sen. Herb Kohl (D-WI), Chairman of the Senate Antitrust Subcommittee, is awaiting a vote in the Senate.

###